



Rep. Kathleen A. Ryg

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LRB095 16884 AJ0 49670 a

1 AMENDMENT TO HOUSE BILL 5574

2 AMENDMENT NO. _____. Amend House Bill 5574 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 1-104.5 and
6 3-703 as follows:

7 (405 ILCS 5/1-104.5)

8 (This Section may contain text from a Public Act with a
9 delayed effective date)

10 Sec. 1-104.5. "Dangerous conduct" means threatening
11 behavior or conduct that places the person or another
12 individual in reasonable expectation of being harmed, or a
13 person's inability to provide, without the assistance of family
14 or outside help, for his or her basic physical needs so as to
15 guard himself or herself from serious harm.

16 (Source: P.A. 95-602, eff. 6-1-08.)

1 (405 ILCS 5/3-703) (from Ch. 91 1/2, par. 3-703)

2 Sec. 3-703. If no certificate was filed, the respondent
3 shall be examined separately by a physician, or clinical
4 psychologist, or qualified examiner and by a psychiatrist. If a
5 certificate executed by a psychiatrist was filed, the
6 respondent shall be examined by a physician, clinical
7 psychologist, qualified examiner, or psychiatrist. If a
8 certificate executed by a qualified examiner, clinical
9 psychologist, or a physician who is not a psychiatrist was
10 filed, the respondent shall be examined by a psychiatrist. The
11 examining physician, clinical psychologist, qualified examiner
12 or psychiatrist may interview by telephone or in person any
13 witnesses or other persons listed in the petition for
14 involuntary admission. If, as a result of an examination, a
15 certificate is executed, the certificate shall be promptly
16 filed with the court. If a certificate is executed, the
17 examining physician, clinical psychologist, qualified examiner
18 or psychiatrist may also submit for filing with the court a
19 report in which his findings are described in detail, and may
20 rely upon such findings for his opinion that the respondent is
21 subject to involuntary admission. Copies of the certificates
22 shall be made available to the attorneys for the parties upon
23 request prior to the hearing. A certificate prepared in
24 compliance with this Article shall state whether or not the
25 respondent is in need of immediate hospitalization. However, if

1 both of the certificates state that the respondent is not in
2 need of immediate hospitalization, the respondent may remain in
3 his or her place of residence absent imminent danger pending a
4 hearing on the petition unless he or she voluntarily agrees to
5 inpatient treatment.

6 (Source: P.A. 85-558.)

7 Section 10. The Mental Health and Developmental
8 Disabilities Confidentiality Act is amended by changing
9 Sections 4, 9.2, and 11 as follows:

10 (740 ILCS 110/4) (from Ch. 91 1/2, par. 804)

11 Sec. 4. (a) The following persons shall be entitled, upon
12 request, to inspect and copy a recipient's record or any part
13 thereof:

14 (1) the parent or guardian of a recipient who is under
15 12 years of age;

16 (2) the recipient if he is 12 years of age or older;

17 (3) the parent or guardian of a recipient who is at
18 least 12 but under 18 years, if the recipient is informed
19 and does not object or if the therapist does not find that
20 there are compelling reasons for denying the access. The
21 parent or guardian who is denied access by either the
22 recipient or the therapist may petition a court for access
23 to the record. Nothing in this paragraph is intended to
24 prohibit the parent or guardian of a recipient who is at

1 least 12 but under 18 years from requesting and receiving
2 the following information: current physical and mental
3 condition, diagnosis, treatment needs, services provided,
4 and services needed, including medication, if any;

5 (4) the guardian of a recipient who is 18 years or
6 older;

7 (5) an attorney or guardian ad litem who represents a
8 minor 12 years of age or older in any judicial or
9 administrative proceeding, provided that the court or
10 administrative hearing officer has entered an order
11 granting the attorney this right; ~~or~~

12 (6) an agent appointed under a recipient's power of
13 attorney for health care or for property, when the power of
14 attorney authorizes the access; or ~~or~~

15 (7) an attorney-in-fact appointed under the Mental
16 Health Treatment Preference Declaration Act.

17 (b) Assistance in interpreting the record may be provided
18 without charge and shall be provided if the person inspecting
19 the record is under 18 years of age. However, access may in no
20 way be denied or limited if the person inspecting the record
21 refuses the assistance. A reasonable fee may be charged for
22 duplication of a record. However, when requested to do so in
23 writing by any indigent recipient, the custodian of the records
24 shall provide at no charge to the recipient, or to the
25 Guardianship and Advocacy Commission, the agency designated by
26 the Governor under Section 1 of the Protection and Advocacy for

1 Developmentally Disabled Persons Act or to any other
2 not-for-profit agency whose primary purpose is to provide free
3 legal services or advocacy for the indigent and who has
4 received written authorization from the recipient under
5 Section 5 of this Act to receive his records, one copy of any
6 records in its possession whose disclosure is authorized under
7 this Act.

8 (c) Any person entitled to access to a record under this
9 Section may submit a written statement concerning any disputed
10 or new information, which statement shall be entered into the
11 record. Whenever any disputed part of a record is disclosed,
12 any submitted statement relating thereto shall accompany the
13 disclosed part. Additionally, any person entitled to access may
14 request modification of any part of the record which he
15 believes is incorrect or misleading. If the request is refused,
16 the person may seek a court order to compel modification.

17 (d) Whenever access or modification is requested, the
18 request and any action taken thereon shall be noted in the
19 recipient's record.

20 (Source: P.A. 88-484; 89-439, eff. 6-1-96.)

21 (740 ILCS 110/9.2)

22 Sec. 9.2. Interagency disclosure of recipient information.
23 For the purposes of continuity of care, the Department of Human
24 Services (as successor to the Department of Mental Health and
25 Developmental Disabilities), community agencies funded by the

1 Department of Human Services in that capacity, licensed private
2 hospitals receiving payments from the Department of Human
3 Services or the Department of Healthcare and Family Services,
4 State correctional facilities ~~prisons operated by the~~
5 ~~Department of Corrections,~~ mental health facilities operated
6 by a county, and jails operated by any county of this State may
7 disclose a recipient's record or communications, without
8 consent, to each other, but only for the purpose of admission,
9 treatment, planning, or discharge. Entities shall not
10 redisclose any personally identifiable information, unless
11 necessary for admission, treatment, planning, or discharge of
12 the identified recipient to another setting. No records or
13 communications may be disclosed to a county jail or State
14 correctional facility ~~prison~~ pursuant to this Section unless
15 the Department has entered into a written agreement with the
16 county jail or State correctional facility ~~prison~~ requiring
17 that the county jail or State correctional facility ~~prison~~
18 adopt written policies and procedures designed to ensure that
19 the records and communications are disclosed only to those
20 persons employed by or under contract to the county jail or
21 State correctional facility ~~prison~~ who are involved in the
22 provision of mental health services to inmates and that the
23 records and communications are protected from further
24 disclosure. For the purposes of this Section, the term
25 "licensed private hospital" shall have the meaning ascribed to
26 it in the Mental Health and Developmental Disabilities Code.

1 (Source: P.A. 94-182, eff. 7-12-05.)

2 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

3 Sec. 11. Disclosure of records and communications. Records
4 and communications may be disclosed:

5 (i) in accordance with the provisions of the Abused and
6 Neglected Child Reporting Act, subsection (u) of Section 5
7 of the Children and Family Services Act, or Section 7.4 of
8 the Child Care Act of 1969;

9 (ii) when, and to the extent, a therapist, in his or
10 her sole discretion, determines that disclosure is
11 necessary to initiate or continue civil commitment
12 proceedings under the laws of this State or to otherwise
13 protect the recipient or other person against a clear,
14 imminent risk of serious physical or mental injury or
15 disease or death being inflicted upon the recipient or by
16 the recipient on himself or another;

17 (iii) when, and to the extent disclosure is, in the
18 sole discretion of the therapist, necessary to the
19 provision of emergency medical care to a recipient who is
20 unable to assert or waive his or her rights hereunder;

21 (iii-a) to any medical practitioner from whom the
22 recipient is seeking medical care, including any primary
23 care physician; however, disclosure shall be limited to
24 pharmaceutical records and communications regarding
25 pharmaceuticals, including records and communications

1 regarding payment for pharmaceuticals;

2 (iv) when disclosure is necessary to collect sums or
3 receive third party payment representing charges for
4 mental health or developmental disabilities services
5 provided by a therapist or agency to a recipient under
6 Chapter V of the Mental Health and Developmental
7 Disabilities Code or to transfer debts under the
8 Uncollected State Claims Act; however, disclosure shall be
9 limited to information needed to pursue collection, and the
10 information so disclosed shall not be used for any other
11 purposes nor shall it be redisclosed except in connection
12 with collection activities;

13 (v) when requested by a family member, the Department
14 of Human Services may assist in the location of the
15 interment site of a deceased recipient who is interred in a
16 cemetery established under Section 100-26 of the Mental
17 Health and Developmental Disabilities Administrative Act;

18 (vi) in judicial proceedings under Article VIII of
19 Chapter III and Article V of Chapter IV of the Mental
20 Health and Developmental Disabilities Code and proceedings
21 and investigations preliminary thereto, to the State's
22 Attorney for the county or residence of a person who is the
23 subject of such proceedings, or in which the person is
24 found, or in which the facility is located, to the attorney
25 representing the recipient in the judicial proceedings, to
26 any person or agency providing mental health services that

1 are the subject of the proceedings and to that person's or
2 agency's attorney, to any court personnel, including but
3 not limited to judges and circuit court clerks, and to a
4 guardian ad litem if one has been appointed by the court,
5 provided that the information so disclosed shall not be
6 utilized for any other purpose nor be redisclosed except in
7 connection with the proceedings or investigations;

8 (vii) when, and to the extent disclosure is necessary
9 to comply with the requirements of the Census Bureau in
10 taking the federal Decennial Census;

11 (viii) when, and to the extent, in the therapist's sole
12 discretion, disclosure is necessary to warn or protect a
13 specific individual against whom a recipient has made a
14 specific threat of violence where there exists a
15 therapist-recipient relationship or a special
16 recipient-individual relationship;

17 (ix) in accordance with the Sex Offender Registration
18 Act;

19 (x) in accordance with the Rights of Crime Victims and
20 Witnesses Act;

21 (xi) in accordance with Section 6 of the Abused and
22 Neglected Long Term Care Facility Residents Reporting Act;
23 and

24 (xii) in accordance with Section 55 of the Abuse of
25 Adults with Disabilities Intervention Act.

26 Any person, institution, or agency, under this Act,

1 participating in good faith in the making of a report under the
2 Abused and Neglected Child Reporting Act or in the disclosure
3 of records and communications under this Section, shall have
4 immunity from any liability, civil, criminal or otherwise, that
5 might result by reason of such action. For the purpose of any
6 proceeding, civil or criminal, arising out of a report or
7 disclosure under this Section, the good faith of any person,
8 institution, or agency so reporting or disclosing shall be
9 presumed.

10 (Source: P.A. 94-852, eff. 6-13-06; 94-1010, eff. 10-1-06;
11 95-331, eff. 8-21-07.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law."